

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CABLE NEWS NETWORK, INC.,

CA No: 17-1167

Plaintiff,

Washington, D.C.
January 22, 2018
3:49 p.m.

vs.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

TRANSCRIPT OF CLOSED HEARING
HELD BEFORE THE HONORABLE JUDGE BOASBERG
UNITED STATES DISTRICT JUDGE

APPEARANCES: Carol Federighi, Esq.
Marcia Berman, Esq.
Brett Schumate, Esq.

Michael Dreeben, Esq.
Aaron Zebley, Esq.
Adam Jed, Esq.

Michael Dreeben, Esq.
Aaron Zebley, Esq.

Michael Dreeben, Esq.
Aaron Zebley, Esq.
Adam Jed, Esq.

Court Reporter: Lisa A. Moreira, RDR, CRR
Official Court Reporter
U.S. Courthouse, Room 6718
333 Constitution Avenue, NW
Washington, DC 20001
202-354-3187

Proceedings recorded by mechanical stenography; transcript produced by computer-aided transcription

1 P R O C E E D I N G S

2 THE COURT: Okay. Welcome, everybody. This is
3 case of 17-1167, *Cable News Network, Inc. vs. Federal Bureau*
4 *of Investigation* and consolidated cases therewith, which are
5 17-1175, 17-1189, 17-1212, and 17-1830. We're present in
6 court. The courtroom has been sealed and made secure.

7 I would ask counsel from the government to
8 identify themselves for the record at the -- yes, and please
9 at the podium.

10 MS. FEDERIGHI: Carol Federighi from the Justice
11 Department on behalf of defendants, Your Honor, and I have
12 Marcia Berman as well as Brett Shumate.

13 THE COURT: Okay.

14 MR. DREEBEN: Your Honor, Michael Dreeben from the
15 Special Counsel's Office, and with me is Aaron Zebley,
16 Deputy Special Counsel, and Adam Jed, J-E-D, who is an
17 Assistant Special Counsel.

18 THE COURT: All right. Thank you very much.

19 Now, the reason we are here is that I have asked
20 for a proffer from a member of the Special Counsel's legal
21 team to give some more detail in regard to the government's
22 claimed Exemption 7A in this case. 7A, again, protects
23 information to the extent that production of that
24 information could reasonably be expected to interfere with
25 enforcement proceedings that are pending or reasonably

1 anticipated, and although I've reviewed the declaration from
2 David Archey, A-R-C-H-E-Y, which was an in camera ex parte
3 declaration, I believe that more specific information is
4 still required to explain how production of the memos at
5 issue could interfere with Special Counsel proceedings.

6 So I would ask you, Mr. Dreeben, if you're
7 prepared to make that proffer?

8 MR. DREEBEN: Yes, Your Honor. Thank you. We are
9 prepared to proceed by proffer to provide the Court with the
10 information necessary to understand the government's
11 invocation of Exemption 7A in this circumstance.

12 My role in the Special Counsel's Office is as
13 counselor to the Special Counsel. In that capacity I have
14 been involved in all phases of the investigation, including
15 the matters that I am going to discuss today, and that
16 knowledge consists not only of my personal participation in
17 the investigation, but also through consultations with the
18 agents and the prosecutors who are specifically assigned to
19 handle those matters.

20 As background, on May 17, 2017, the acting
21 Attorney General appointed, as Special Counsel, Robert
22 Mueller to conduct an investigation that was defined in the
23 acting Attorney General's order. That investigation
24 entailed exploring the matters that Former FBI Director
25 Comey had detailed in a hearing on March 20th in the House

1 Committee appearance that he made as well as matters that
2 arose from or may arise from that investigation and matters
3 that are covered by 28 CFR 600.4. That section of the
4 Special Counsel Regulations authorizes the Special Counsel
5 to look into matters that would interfere with the
6 investigation being conducted, including obstruction of
7 justice.

8 Before the appointment of the Special Counsel on
9 May 17th, the FBI had opened an investigation into
10 obstruction of justice. That investigation entailed matters
11 that were covered in the Comey memoranda, which explored and
12 recorded Mr. Comey's recollections of meetings, including
13 one-on-one meetings with the President of the United States.
14 In those meetings, events occurred that led the FBI to
15 conclude that an investigation was appropriate under its
16 authority to consider matters such as obstruction of
17 justice.

18 The subject of that investigation would be defined
19 by reference to the United States Attorney's manual's
20 consideration of what is a subject of an investigation.
21 That is a person whose conduct is within the scope of the
22 investigation.

23 In this instance, a person whose conduct is within
24 the scope of the investigation is the President of the
25 United States. The Comey memoranda record Mr. Comey's

1 recollections of one-on-one interactions with the President
2 of the United States.

3 As part of the Special Counsel's investigation,
4 Special Counsel is attempting to determine the facts that
5 transpired in and surrounding those meetings. In any
6 investigation of this kind, the recollections of one
7 witness, if disclosed to another potential witness, have the
8 potential to influencing, advertently or inadvertently, the
9 recollections of that witness. Accordingly, investigative
10 materials, such as detailed witness statements like this,
11 are typically held in confidence through the course of the
12 investigation and any ensuing proceedings to ensure that all
13 witnesses provide truthful evidence based on their own
14 recollections and not on any inadvertent or advertent
15 tailoring or influence from other witness statements.

16 In the case of the Comey memoranda, Director Comey
17 did testify in open Senate proceedings on June 8th as to
18 some of the events that are captured in his prior
19 contemporaneously recorded memoranda. But those memoranda
20 are also far more detailed in many instances than the
21 matters that Mr. Comey revealed either in his statement for
22 the record or in his oral testimony before the Senate; and
23 even in those instances in which Mr. Comey's memos mirror
24 the language and content that he provided in open session,
25 it is still of utmost importance to the investigation that

1 those matters remain confidential.

2 A witness who knows that a contemporaneous record
3 was made of particular statements is aware that the
4 reliability of that account is enhanced merely by virtue of
5 the fact that it was recorded, and an individual who is
6 seeking to shape or mold his own statements around those of
7 others thereby acquires an advantage in doing so that he
8 would not otherwise have.

9 At the same time, the Special Counsel's Office
10 must necessarily rely heavily on its ability to corroborate
11 the details of the encounters between Mr. Comey and the
12 President by turning to other sources of evidence. The more
13 that other witnesses are aware of the details of what is in
14 the memoranda and is not in the memoranda, the greater the
15 risk that they're providing information that will assist the
16 Special Counsel in completing the investigation and getting
17 to the truth would be frustrated or impeded.

18 Accordingly, Special Counsel's Office believes
19 that the disclosure of the Comey memoranda at this time
20 would reasonably be expected to interfere with enforcement
21 proceedings.

22 THE COURT: All right. Thank you very much,
23 Mr. Dreeben. I believe that that explains in more detail
24 the government's position regarding Exemption 7A and is
25 helpful to me in making my determination of whether that

1 exemption applies. Thank you.

2 MR. DREEBEN: Thank you, Your Honor.

3 (Whereupon the hearing was

4 concluded at 3:59 p.m.)

5

6 **CERTIFICATE OF OFFICIAL COURT REPORTER**

7

8 I, LISA A. MOREIRA, RDR, CRR, do hereby
9 certify that the above and foregoing constitutes a true and
10 accurate transcript of my stenographic notes and is a full,
11 true and complete transcript of the proceedings to the best
12 of my ability.

13 Dated this 18th day of April, 2019.

14
15 
16 Official Court Reporter
United States Courthouse
Room 6718
333 Constitution Avenue, NW
17 Washington, DC 20001
18
19
20
21
22
23
24
25